



SMITH MOORE LEATHERWOOD

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January 25, 2012

Dr. Jihui Zhang
102 Rowe Road
Chapel Hill, North Carolina 27516

Re: Jihui Zhang v. Federation of State Medical Boards, National Board of Medical
Examiners, and Prometric

Dear Dr. Zhang:

We have received the Request for Admissions and Request for Production of Documents to Defendants Federation of State Medical Boards and National Board of Medical Examiners, which were served January 19, 2012. We believe the discovery is improper and request that it be withdrawn.

Under Rule 26(d) of the Federal Rules of Civil Procedure, “[a] party may *not* seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempt from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.” Fed. R. Civ. P. 26(d) (emphasis added). The exemptions listed in Rule 26(a)(1)(B) are:

- (i) an action for review on an administrative record;
- (ii) a forfeiture action in rem arising from a federal statute;
- (iii) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;
- (iv) an action brought without an attorney by a person in the custody of the United States, a state or a state subdivision;
- (v) an action to enforce or quash an administrative summons or subpoena;
- (vi) an action by the United States to recover benefit payments;
- (vii) an action by the United States to collect on a student loan guaranteed by the United States;
- (viii) a proceeding ancillary to a proceeding in another court; and

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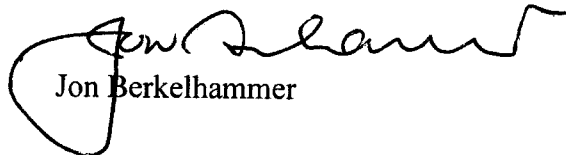
(ix) an action to enforce an arbitration award.

Fed. R. Civ. P. 26(a)(1)(B)(i) -- (ix). None of these exemptions are applicable to this matter, and no court order or stipulation has been entered permitting discovery. The discovery, therefore, is improper, and no responses are required. Accordingly, we request that you notify us by Monday, February 6, 2012, that the discovery is withdrawn and no responses are required. If we do not hear from you by then, we will prepare a motion for a protective order. We also will request that we be reimbursed for our fees and expenses for bringing the motion. *See* Fed. R. Civ. P. 37. Finally, please consider this letter satisfaction of our obligations to meet and confer regarding this matter.

With kindest regards, I am

Very truly yours,

SMITH MOORE LEATHERWOOD LLP



Jon Berkelhammer

JAB/jb

cc: Mr. Reid L. Phillips